

AMENDED IN SENATE MAY 12, 2009  
AMENDED IN SENATE APRIL 28, 2009  
AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 555**

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**Introduced by Senator Kehoe**

February 27, 2009

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An act to add Section 1240.055 to the Code of Civil Procedure, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 555, as amended, Kehoe. Eminent Domain Law: conservation easement.

Existing law authorizes various agencies to acquire land for purposes related to conservation. Existing law provides for a conservation easement to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition. Existing law establishes procedures for the independent appraisal review of land to be acquired for conservation and establishes a conservation easement registry. Existing law prohibits, with a specified exception, *the sale of* conservation lands ~~from being sold~~ to another owner or ~~having the transfer of possession and control transferred of conservation lands~~ to another agency, unless specified actions occur.

The California Constitution permits private property to be taken or damaged for public use only when just compensation is paid. The Eminent Domain Law prescribes how that constitutionally authorized power may be exercised and permits that exercise only for a public use. *Existing law prohibits a public entity from commencing an eminent*

*domain proceeding until its governing body has adopted a resolution of necessity that meets specified requirements.*

~~This bill would revise the Eminent Domain Law to prohibit a person from acquiring a conservation easement by eminent domain, unless specified procedures are followed to establish requirements for acquisition of property subject to a conservation easement. The bill would require the person seeking to acquire the property to give the holder of the conservation easement a notice containing specified information and an opportunity to state any objections to the proceedings acquisition. The bill would require the holder of conservation easement to provide notice, as specified, of the proposed acquisition to a public entity that helped fund the purchase of the conservation easement or that imposed conditions on a project that were satisfied, in whole or in part, by the conservation easement. The bill would provide that a holder of a conservation easement or a public entity, as described above, that fails to make written objection to the acquisition within specified time periods would waive the right to appear and be heard at the hearing prior to the adoption of a resolution of necessity. The bill would require a person seeking to acquire the property subject to a conservation easement to respond to any objections in writing and provide by first-class mail the response to each easement holder or public entity that filed an objection. The bill would require the notice of the hearing on the resolution of necessity to be sent to any holder of a conservation easement or public entity that submits objections. The bill would require that a resolution of necessity to acquire property subject to a conservation easement to refer to specific authority for the acquisition of the property. The bill would specify that the holder of a conservation easement is entitled to compensation under the Eminent Domain Law.~~

To the extent that this bill would impose new duties on a local governmental entity, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1240.055 is added to the Code of Civil Procedure, to read:

1240.055. (a) As used in this section, the following terms have the following meanings:

(1) “Conservation easement” means a ~~recorded~~ conservation easement as defined in Section 815.1 of the Civil Code *and recorded as required by Section 815.5 of the Civil Code.*

(2) “Holder of a conservation easement” means an entity or organization authorized to acquire and hold conservation easements pursuant to Section 815.3 of the Civil Code.

(3) “Person” means any person authorized to acquire property by eminent domain.

(4) “Property appropriated to public use,” as used in Article 6 (commencing with Section 1240.510) and Article 7 (commencing with Section 1240.610), includes a conservation easement.

(b) A person authorized to acquire property for a particular use by eminent domain shall ~~not~~ exercise the power of eminent domain to acquire, for public use, property that is subject to a conservation easement, ~~except~~ *easement only* as provided in this section.

~~(c) When it appears that property subject to a conservation easement may be required for a public use, the person seeking to acquire the property shall, not less than 90 days prior to the hearing on the resolution of necessity, provide written notice to the entity or organization that holds the conservation easement of its intention to initiate eminent domain proceedings to acquire property that is subject to a conservation easement.~~

~~(1) The notice shall:~~  
~~(A) Provide a general description, in text or by diagram, of the property subject to a conservation easement that is proposed for acquisition.~~

~~(B) Provide a description of the public use or improvement that the person is considering for the property.~~

~~(C) Provide an opportunity for the holder of the conservation easement to consult with the person seeking to acquire the property prior to commencement of eminent domain proceedings.~~

~~(D) Inform the easement holder that, upon receipt of the notice, the easement holder shall inform the person intending to initiate eminent domain proceedings of the name and address of any public entity that provided funds for the purchase of the easement or required it as a condition of approval.~~

~~(2) Within 30 days after receipt of notice from the person seeking to acquire the property, the holder of the conservation easement may state in writing its objections to the acquisition, including identifying any potential conflict between the public use proposed for the property and the particular characteristics of the conservation easement.~~

~~(3) The person intending to acquire the property subject to a conservation easement shall, within 30 days after receipt of comments from the holder of the conservation easement, respond in writing to the comments.~~

~~(d) If the conservation easement was purchased with state or local public funds or if a public entity required the conservation easement as a condition of project approval, the easement holder upon receipt of the notice pursuant to paragraph (1) shall inform the person intending to initiate eminent domain proceedings of the name and address of any public entity that provided funds for the purchase of the easement or required it as a condition of approval. The person intending to initiate eminent domain proceedings shall provide to the public entity that provided funds or required the easement the same notice described in paragraph (1) of subdivision (c) and the public entity shall have 30 days after receipt of notice from the person intending to initiate eminent domain proceedings to state in writing its objections to the acquisition. This provision shall not apply if there are no recorded documents that evidence, and the easement holder has no record or independent knowledge of, the identity of the public entity that provided funds to purchase the conservation easement or that required the conservation easement as a condition of approval.~~

~~(e) In any eminent domain proceeding to acquire property subject to a conservation easement:~~

~~(1) The provisions of Section 815.2 of the Civil Code shall apply.~~

~~(2) The~~

~~(c) Not later than 90 days prior to the hearing held pursuant to Section 1245.235, the person seeking to acquire property subject~~

1 to a conservation easement shall give notice to the holder of a  
2 conservation easement as provided in this subdivision.

3 (1) The notice required by this subdivision shall be sent by  
4 first-class mail and, subject to the provisions of paragraph (2),  
5 shall state all of the following:

6 (A) A general description, in text or by diagram, of the property  
7 subject to a conservation easement that the person proposes to  
8 acquire by eminent domain.

9 (B) A description of the public use or improvement that the  
10 person is considering for the property subject to a conservation  
11 easement.

12 (C) The date by which objections may be submitted pursuant  
13 to paragraph (3).

14 (D) A description of the duty of the holder of the conservation  
15 easement, if the duty exists under paragraph (2), to provide a copy  
16 of the notice by first-class mail to each public entity that provided  
17 funds for the purchase of the easement or that imposed conditions  
18 on a project that were satisfied, in whole or in part, by the  
19 conservation easement, within 15 days of receipt of the notice from  
20 the person seeking to acquire property, and a statement that any  
21 such public entity has 30 days from the date the conservation  
22 easement holder mailed the notice to submit written objections.  
23 This description shall specifically reference paragraph (2) of  
24 subdivision (c) of Section 1240.055 of the Code of Civil Procedure.

25 (E) A statement indicating that the failure of the holder of the  
26 conservation easement to provide, in writing, its objections to the  
27 acquisition, on or before 45 days after the date the notice from the  
28 person seeking to acquire property is mailed, will result in the  
29 waiver of the right to appear and be heard at the hearing required  
30 prior to the adoption of the resolution of necessity.

31 (2) (A) If the requirements of subparagraph (B) are met, the  
32 holder of the conservation easement shall provide by first-class  
33 mail a copy of the notice described in paragraph (1) to any public  
34 entity that provided funds for the purchase of the conservation  
35 easement or that imposed conditions on a project that were  
36 satisfied, in whole or in part, by the conservation easement. The  
37 holder of the conservation easement shall provide the copy of the  
38 notice to the public entity within 15 days of receipt of the notice  
39 from the person seeking to acquire property and shall also notify

1 *the person seeking to acquire property of any public entity that is*  
2 *entitled to notification.*

3 *(B) Subparagraph (A) shall apply only if one of the following*  
4 *is true:*

5 *(i) The holder of the easement is the original grantee of the*  
6 *conservation easement and there is a public entity as described in*  
7 *subparagraph (A).*

8 *(ii) The holder of the easement has actual knowledge of a public*  
9 *entity as described in subparagraph (A).*

10 *(iii) Recorded documents evidence the identity of a public entity*  
11 *as described in subparagraph (A).*

12 *(3) The holder of the conservation easement or the public entity*  
13 *receiving notice, or both, may provide to the person seeking to*  
14 *acquire the property written objections to the acquisition, including*  
15 *identifying any potential conflict between the public use proposed*  
16 *for the property and the purposes and terms of the conservation*  
17 *easement. The holder of the conservation easement shall provide*  
18 *these objections, if any, on or before 45 days after the date the*  
19 *person seeking to acquire property mailed the notice or waive the*  
20 *right to appear and be heard at the hearing required prior to the*  
21 *adoption of the resolution of necessity. A public entity as described*  
22 *in paragraph (2) shall provide these objections, if any, on or before*  
23 *30 days after the date a conservation easement holder mailed a*  
24 *copy of the notice to the entity or waive the right to appear and*  
25 *be heard at the hearing required prior to the adoption of the*  
26 *resolution of necessity.*

27 *(d) The person seeking to acquire the property subject to a*  
28 *conservation easement shall, within 30 days after receipt of written*  
29 *objections from the holder of the conservation easement or from*  
30 *a public entity described in paragraph (2) of subdivision (c) shall*  
31 *respond in writing to the objections. The response to the objections*  
32 *shall be mailed by first-class mail to each easement holder or*  
33 *public entity that filed an objection.*

34 *(e) The notice of the hearing on the resolution of necessity,*  
35 *pursuant to Section 1245.235, shall be sent to any holder of a*  
36 *conservation easement and public entity that submits objections*  
37 *and shall inform them that they have the right to appear and be*  
38 *heard on the matters referred to in Sections 1240.030, 1240.510,*  
39 *and 1240.610. The resolution of necessity to acquire property*  
40 *subject to a conservation easement shall refer specifically to either*

1 to Section 1240.510 or 1240.610 as authority for the acquisition  
2 of the property.

3 (f) In any eminent domain proceeding to acquire property  
4 subject to a conservation easement, the holder of the conservation  
5 easement shall be named as a defendant, as set forth in Section  
6 1250.220, may appear in the proceedings as set forth in Section  
7 1250.230, and shall have all the same rights and obligations as any  
8 other defendant in the eminent domain proceeding.

9 (f)

10 (g) The holder of a conservation easement is ~~an owner of~~  
11 ~~property entitled to compensation if that property is taken, pursuant~~  
12 ~~to Section 1263.010 pursuant to subdivision (a) of Section~~  
13 ~~1260.220 and Chapter 9 (commencing with Section 1263.010).~~  
14 Compensation for the taking of all interests in the property subject  
15 to a conservation easement shall be no less than the compensation  
16 paid for fair market value of the property if it were unencumbered  
17 by that conservation easement.

18 (g)

19 (h) This section shall not apply if the requirements of Section  
20 1348.3 of the Fish and Game Code apply.

21 SEC. 2. If the Commission on State Mandates determines that  
22 this act contains costs mandated by the state, reimbursement to  
23 local agencies and school districts for those costs shall be made  
24 pursuant to Part 7 (commencing with Section 17500) of Division  
25 4 of Title 2 of the Government Code.